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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/079,388	02/20/2002	J. David Carlson	IR-2881(EV)	8462

7590 11/17/2003

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EXAMINER
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BUTLER, DOUGLAS C

ART UNIT	PAPER NUMBER
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3683

DATE MAILED: 11/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/079,388	<b>Applicant(s)</b> CARLSON ET AL.	
	<b>Examiner</b> Douglas C. Butler	<b>Art Unit</b> 3683	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 August 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 1-19 and 26-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20,21,25 and 33-35 is/are rejected.
- 7) ☒ Claim(s) 22-24 is/are objected to.
- 8) ☒ Claim(s) 1-35 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

### DETAILED ACTION

1. An action on the merits of claims 20-25 and 33-35 considered readable on Species D(embodiment labeled 130d of Figure 3b )is included in this office action with claims 1-19, 26-32 being withdrawn from consideration. 37 C.F.R. § 1.142(b). Election was made without traverse in Paper No. 5 filed on August 22, 2003 .
2. The International Search Report has been considered. The prior art included in the Report has been considered and has been made of record by way of Form PTO-1449. A copy of the Form PTO-1449 is enclosed for applicant's files. Note that all prior art submitted has been considered.
3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 33-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is no clear antecedent basis in the claims for "said damper" of claim 33, line 6.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 20-21, 25 and 33-35 are rejected under 35 U.S.C. 102(b) as being anticipated by submitted JP 11-108106. See the submitted International Search Report and translation obtained by the examiner.

7. Claims 22-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The International Search Report indicates that claims 22-24 are unpatentable over JP 11-108106 in view of US6151930. The instant examiner does not agree with the conclusion in that the motivation or suggestion for arriving at the holding is not present in the references insofar as the instant examiner can determine. Applicants should keep the USPTO current if Chapter II proceedings take place which may involve further comments.

8. Claims 20-21, 25 and 33-35 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 3724361 to Herberg, of record.

During loss of power to the damping apparatus of the single figure of Herberg, vibration is limited by use of secondary controller/voltage supply 92, 93.

9. Claims 20-21, 25 and 33-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Vandermolen(US006082715).

Note secondary controllable 40, 42 for vibration control of filed controllable medium dampers 30 in Figure 2 of Vandermolen.

10. WO 03/072976A1 is cited to complete the record. The instant specification should include a cross-reference to the indicated publication.

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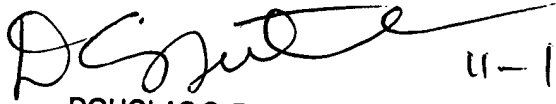
11. JP11-41805 and a corresponding translation are attached. JP11-41805 is similar to JP 11-108106

12. Note Wulff et al(56325361), of record, with means(permanent magnet field) for limiting vibration during power loss. See Oliver et al(US6419057), of record, with a control circuit for limiting vibration during power failure.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Exmr. Butler whose telephone number is (703) 308-2575. The examiner is normally in the USPTO Monday-Friday from 5:30 a.m. to 2:00p.m. Although the examiner may not always be present in his office to immediately answer the phone when called, the examiner will make every effort to return the call as soon as possible. If the examiner does not answer his phone, the examiner suggests that a brief message be recorded on the examiner's voice mail machine when necessary and appropriate. The examiner normally checks recorded phone calls at least once a day unless on leave.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9326.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

 11-12-2003  
DOUGLAS C. BUTLER  
PRIMARY EXAMINER  
AV3683